



January 26, 2016

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## HOUSE BILL No. 1164

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DIGEST OF HB 1164 (Updated January 26, 2016 11:57 am - DI 87)

**Citations Affected:** IC 5-11; IC 34-30; IC 35-31.5; IC 35-50.

**Synopsis:** Law enforcement officers and investigations. Establishes the fraud division within the state board of accounts. Requires the state examiner to appoint a director of special investigations to manage the fraud division. Requires that the director of special investigations must have at least 10 years of law enforcement experience. Specifies the powers and duties of the fraud division in conducting investigations. Provides that the state examiner, the director of special investigations, or an employee of the fraud division is not personally liable for an act done or omitted in connection with the performance of duties relating to the statutes governing the accounting for public funds (IC 5-11). Provides that the director of special investigations (director) is a law enforcement officer for purposes of the criminal law. Allows the director to arrest and search and seize property or persons only at a request for assistance from another law enforcement officer. the Adds gaming agents, gaming control officers, and the director of special investigations to the definition of "police officer" for purposes of the statute providing a sentence enhancement for individuals who point a firearm or discharge a firearm at a police officer while committing certain crimes.

**Effective:** July 1, 2016.

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**Mahan, Truitt, Morris, Stemler**

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January 19, 2016, read first time and referred to Committee on Government and Regulatory Reform.  
January 26, 2016, amended, reported — Do Pass.

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HB 1164—LS 6559/DI 92





January 26, 2016

Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

## HOUSE BILL No. 1164

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 5-11-5.1 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2016]:

4 **Chapter 5.1. State Board of Accounts Fraud Division**

5 **Sec. 1. (a) The general assembly intends for the provisions of**  
6 **this chapter delegating and granting power to the director of**  
7 **special investigations to be liberally construed for the following**  
8 **purposes:**

9 (1) **To deter and prevent the practice or commission of fraud**  
10 **in public office.**

11 (2) **To ensure the disclosure of sufficient and reliable financial**  
12 **information for the state board of accounts to exercise**  
13 **independent judgment under this article.**

14 (3) **To assure the citizens of Indiana that there is transparency**  
15 **in the operations of state and local government.**

16 (4) **To ensure that public officials, employees, contractors, and**  
17 **other proper persons engaged in or having a connection with**

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1 the handling of public funds are held accountable.

2 (b) It is the intent and purpose of this chapter to delegate and  
3 grant to the state examiner, the director of special investigations,  
4 and the fraud division full and complete power to carry into effect  
5 and accomplish the purpose of this article and to charge them with  
6 full and complete responsibility for its effective administration.

7 Sec. 2. (a) The fraud division is established within the state  
8 board of accounts. The state examiner shall appoint a director of  
9 special investigations to be responsible for the direction,  
10 supervision, and administration of the fraud division. The fraud  
11 division is considered a criminal justice agency for purposes of  
12 IC 5-2-4 and IC 10-13-3.

13 (b) The director of special investigations must have at least ten  
14 (10) years of law enforcement experience, and must have  
15 completed at least tier III basic training at the Indiana law  
16 enforcement academy.

17 Sec. 3. The director of special investigations shall take,  
18 prescribe, and file the oath of office prescribed by law. The  
19 director of special investigations is a police officer of the state and  
20 has all the powers and duties of a police officer. However, the  
21 director of special investigations may not make an arrest or  
22 conduct a search or a seizure of a person or property unless the  
23 arrest, search, or seizure is performed while assisting another law  
24 enforcement officer who has requested the assistance of the  
25 director of special investigations.

26 Sec. 4. (a) The director of special investigations shall cooperate,  
27 coordinate, consult, and share records and information with the  
28 attorney general and the appropriate prosecuting attorney in  
29 accordance with IC 5-11-5-1. The director of special investigations  
30 may cooperate, coordinate, consult, and share records and  
31 information with local, state, and federal law enforcement  
32 agencies, the United States Department of Justice, and other  
33 governmental agencies as necessary to recover public funds.

34 (b) The cooperation, coordination, consultation, and sharing of  
35 records and information authorized by this section include:

- 36 (1) establishing or employing one (1) or more designees as a  
37 central depository for records required or allowed to be  
38 maintained under this article;  
39 (2) developing and maintaining uniform forms;  
40 (3) conducting a joint examination or investigation;  
41 (4) sharing and exchanging personnel;  
42 (5) sharing and exchanging records, subject to IC 5-11-5-1;



- (6) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;
- (7) formulating common systems and procedures;
- (8) notifying the public of proposed rules, forms, statements of policy, and guidelines; and
- (9) attending conferences and other meetings with other fraud examiners, which may include representatives of governmental and private sector organizations.

**Sec. 5. The director of special investigations may do any of the following:**

- (1) Conduct public or private investigations within or outside Indiana that the director of special investigations considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this article, or to aid in the enforcement of this article or in the adoption of rules and forms under this article.
- (2) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the director of special investigations determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted.
- (3) Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this article or a rule adopted under this article if the state examiner determines it is necessary or appropriate in the public interest and for the protection of public funds.

**Sec. 6. (a) For the purpose of an investigation under this article, the director of special investigations may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the state examiner considers relevant or material to the investigation. Upon order of the director of special investigations, depositions may be taken in the manner prescribed by law for depositions in civil actions and made returnable to the director of special investigations.**

**(b) If a person does not appear or refuses to testify, file a statement, or produce records, or otherwise does not obey a subpoena as required by this article, the state examiner may apply to the circuit or superior court in the county where the investigation or inquiry in question is being conducted to enforce compliance. The court may:**

- (1) hold the person in contempt;



- (2) order the person to appear before the state examiner;
- (3) order the person to testify about the matter under investigation or in question;
- (4) order the production of records;
- (5) grant injunctive relief, including restricting or prohibiting the public official, employee, contractor, or other proper person from serving in office or handling public funds;
- (6) impose a civil penalty of not more than five thousand dollars (\$5,000) for each violation; and
- (7) grant any other necessary or appropriate relief.

Sec. 7. (a) If a witness, in any inquiry or investigation conducted under this article, refuses to answer any question or produce any item, the director of special investigations may file a written petition with the circuit or superior court in the county where the investigation or inquiry in question is being conducted requesting a hearing on the refusal. The court shall hold a hearing to determine if the witness may refuse to answer the question or produce the item. If the court determines that the witness, based upon the witness's privilege against self-incrimination, may properly refuse to answer or produce an item, the state examiner may make a written request that the court grant use immunity to the witness. Upon written request of the director of special investigations, the court shall grant use immunity to a witness. The court shall instruct the witness, by written order or in open court, that:

- (1) any evidence the witness gives, or evidence derived from that evidence, may not be used in any criminal proceedings against that witness, unless the evidence is volunteered by the witness or is not responsive to a question; and
- (2) the witness must answer the questions asked and produce the items requested.

(b) A grant of use immunity under subsection (a) does not prohibit the use of evidence that the witness gives in an investigation or inquiry from being used in a prosecution for perjury under IC 35-44.1-2-1. If a witness refuses to give the evidence after the witness has been granted use immunity, the court may find the witness in contempt.

Sec. 8. Sections 5 through 7 of this chapter do not preclude a person from applying to the circuit or superior court in the county where the investigation or inquiry in question is being conducted for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.



1       **Sec. 9.** A witness who appears before the director of special  
 2 investigations by order is entitled to receive for the witness's  
 3 attendance the fees and mileage provided for witnesses in civil  
 4 cases. Fees allowed under this section must be audited and paid by  
 5 the state in the same manner as other expenses of the state board  
 6 of accounts. However, a witnesses subpoenaed at the instance of a  
 7 party other than the director of special investigations is not entitled  
 8 to any fee or compensation from the state.

9       **Sec. 10.** Upon completion of the fraud division's inquiry or  
 10 investigation, the director of special investigations shall submit a  
 11 certified examination report that discloses misfeasance,  
 12 malfeasance, nonfeasance, or the commission of a crime by any  
 13 person to the attorney general, the inspector general, and the  
 14 appropriate prosecuting attorney as required by law.

15       **Sec. 11.** In any prosecution, action, suit, or proceeding based  
 16 upon, arising out of, or otherwise resulting from a certified  
 17 examination report, the certified examination report:

- 18       (1) constitutes prima facie evidence of misfeasance,  
 19 malfeasance, nonfeasance, or compliance or noncompliance  
 20 with this article; and
- 21       (2) is admissible in evidence in any action at law or in equity  
 22 to enforce this article.

23       **Sec. 12.** Copies of statements and documents filed in the office  
 24 of the state board of accounts and of the records of the state board  
 25 of accounts certified by the state examiner are admissible in any  
 26 prosecution, action, suit, or proceeding based upon, arising out of,  
 27 or otherwise initiated under this article to the same effect as the  
 28 original statement, document, or record would be if actually  
 29 produced.

30       **Sec. 13.** This article does not create or diminish a privilege or  
 31 exemption that exists at common law, by statute or rule, or  
 32 otherwise.

33       **Sec. 14.** The following are not personally liable, except to the  
 34 state, for an act done or omitted in connection with the  
 35 performance of duties under this article:

- 36       (1) The state examiner.
- 37       (2) The director of special investigations.
- 38       (3) An employee of the fraud division.

39       **Sec. 15.** IC 4-21.5 does not apply to a proceeding conducted  
 40 under this chapter.



1        **Sec. 16. This article does not limit the power of the state to**  
 2        **punish a person for conduct that constitutes a crime under any**  
 3        **other statute.**

4        SECTION 2. IC 34-30-2-11.6 IS ADDED TO THE INDIANA  
 5        CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 6        [EFFECTIVE JULY 1, 2016]: **Sec. 11.6. IC 5-11-5.1-14 (Concerning**  
 7        **certain officers and employees of the state board of accounts).**

8        SECTION 3. IC 35-31.5-2-185, AS AMENDED BY P.L.238-2015,  
 9        SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10        JULY 1, 2016]: Sec. 185. (a) "Law enforcement officer" means:

11        (1) a police officer (including a correctional police officer),  
 12        sheriff, constable, marshal, prosecuting attorney, special  
 13        prosecuting attorney, special deputy prosecuting attorney, the  
 14        securities commissioner, or the inspector general;

15        (2) a deputy of any of those persons;

16        (3) an investigator for a prosecuting attorney or for the inspector  
 17        general;

18        (4) a conservation officer;

19        (5) an enforcement officer of the alcohol and tobacco  
 20        commission;

21        (6) an enforcement officer of the securities division of the office  
 22        of the secretary of state; ~~or~~

23        (7) a gaming agent employed under IC 4-33-4.5 or a gaming  
 24        control officer employed by the gaming control division under  
 25        IC 4-33-20; **or**

26        **(8) the director of special investigations of the state board of**  
 27        **accounts.**

28        (b) "Law enforcement officer", for purposes of IC 35-42-2-1,  
 29        includes an alcoholic beverage enforcement officer, as set forth in  
 30        IC 35-42-2-1.

31        (c) "Law enforcement officer", for purposes of IC 35-45-15,  
 32        includes a federal enforcement officer, as set forth in IC 35-45-15-3.

33        (d) "Law enforcement officer", for purposes of IC 35-44.1-3-1 and  
 34        IC 35-44.1-3-2, includes a school resource officer (as defined in  
 35        IC 20-26-18.2-1) and a school corporation police officer appointed  
 36        under IC 20-26-16.

37        SECTION 4. IC 35-50-2-11, AS AMENDED BY P.L.238-2015,  
 38        SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 39        JULY 1, 2016]: Sec. 11. (a) As used in this section, "firearm" has the  
 40        meaning set forth in IC 35-47-1-5.

41        (b) As used in this section, "offense" means:



- (1) a felony under IC 35-42 that resulted in death or serious bodily injury;
- (2) kidnapping; or
- (3) criminal confinement as a Level 2 or Level 3 felony.

(c) As used in this section, "police officer" means any of the following:

- (1) A state police officer.
- (2) A county sheriff.
- (3) A county police officer.
- (4) A city police officer.
- (5) A state educational institution police officer appointed under IC 21-39-4.
- (6) A school corporation police officer appointed under IC 20-26-16.
- (7) A police officer of a public or private postsecondary educational institution whose board of trustees has established a police department under IC 21-17-5-2 or IC 21-39-4-2.
- (8) An enforcement officer of the alcohol and tobacco commission.
- (9) A conservation officer.
- (10) A gaming agent employed under IC 4-33-4.5 or a gaming control officer employed by the gaming control division under IC 4-33-20.**
- (11) The director of special investigations of the state board of accounts.**

(d) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed an offense sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense.

(e) The state may seek, on a page separate from the rest of a charging instrument, to have a person who allegedly committed a felony or misdemeanor other than an offense (as defined under subsection (b)) sentenced to an additional fixed term of imprisonment if the state can show beyond a reasonable doubt that the person, while committing the felony or misdemeanor, knowingly or intentionally:

- (1) pointed a firearm; or
- (2) discharged a firearm;

at an individual whom the person knew, or reasonably should have known, was a police officer.

(f) If the person was convicted of:

- (1) the offense under subsection (d); or



1 (2) the felony or misdemeanor under subsection (e);  
2 in a jury trial, the jury shall reconvene to hear evidence in the  
3 enhancement hearing. If the trial was to the court, or the judgment was  
4 entered on a guilty plea, the court alone shall hear evidence in the  
5 enhancement hearing.

6 (g) If the jury (if the hearing is by jury) or the court (if the hearing  
7 is to the court alone) finds that the state has proved beyond a  
8 reasonable doubt that the person knowingly or intentionally used a  
9 firearm in the commission of the offense under subsection (d), the court  
10 may sentence the person to an additional fixed term of imprisonment  
11 of between five (5) years and twenty (20) years.

12 (h) If the jury (if the hearing is by jury) or the court (if the hearing  
13 is to the court alone) finds that the state has proved beyond a  
14 reasonable doubt that the person, while committing a felony or  
15 misdemeanor under subsection (e), knowingly or intentionally:

16 (1) pointed a firearm; or

17 (2) discharged a firearm;

18 at an individual whom the person knew, or reasonably should have  
19 known, was a police officer, the court may sentence the person to an  
20 additional fixed term of imprisonment of between five (5) and twenty  
21 (20) years.

22 (i) A person may not be sentenced under subsections (g) and (h) for  
23 offenses, felonies, and misdemeanors comprising a single episode of  
24 criminal conduct.



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1164, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 20, delete "police officers in:" and insert "**a police officer. However, the director of special investigations may not make an arrest or conduct a search or a seizure of a person or property unless the arrest, search, or seizure is performed while assisting another law enforcement officer who has requested the assistance of the director of special investigations.**".

Page 2, delete lines 21 through 24.

and when so amended that said bill do pass.

(Reference is to HB 1164 as introduced.)

MAHAN

Committee Vote: yeas 12, nays 0.

